

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT (INNOVATION  
AND SCIENCE AUSTRALIA) BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Greg Hunt MP, the Minister for Industry,  
Innovation and Science)

# INDUSTRY RESEARCH AND DEVELOPMENT AMENDMENT (INNOVATION AND SCIENCE AUSTRALIA) BILL 2016

## OUTLINE

### Background

1. On 7 December 2015, the Government released the National Innovation and Science Agenda (the Agenda), a blueprint for a more innovative and entrepreneurial Australia, that seeks to transform Australia into a leading innovation nation and position our country to seize the next wave of economic prosperity. The Agenda is a plan to ensure Australia utilises innovation and science to embrace and shape the future of its economy, and remains a high-wage first world economy with a generous social welfare safety net.
2. The Industry Research and Development Amendment (Innovation and Science Australia) Bill 2016 (the Bill) is a key component of the Agenda. The Bill will address the need for a more coordinated whole of government approach to, and return on, the Government's substantial annual investment in science, research and innovation (\$10.1 billion in 2016-17). It will also promote the development, and improve the efficiency and competitiveness, of Australian industry by supporting greater engagement in science, research and innovation.
3. The Bill seeks to achieve these aims by amending the *Industry Research and Development Act 1986* (the Act) in two key ways: firstly, by transitioning Innovation Australia to become a new body, Innovation and Science Australia; and secondly, by inserting a statutory framework to provide legislative authority for Commonwealth spending activities in relation to industry, innovation, science and research programs.

### Overview of Innovation and Science Australia

4. The Bill will transition the current board, Innovation Australia, to become Innovation and Science Australia, a new independent body responsible for strategic whole of government advice on all science, research and innovation matters. Innovation and Science Australia will work across government and directly with international, business and community sectors to develop extensive stakeholder links and improve the national innovation system's overall performance. As part of its strategic advice, Innovation and Science Australia will undertake comprehensive audits and regular reviews of Australia's science, research and innovation system to assess and make recommendations to align Government strategic priorities. It will also develop a long term, fifteen year National Innovation and Science Plan to identify science, research and innovation investment priorities and specific areas for policy and program reform.
5. Beyond providing advice to Government, Innovation and Science Australia will have a strong role in stimulating public discussion and debate about innovation and science. It will publish its research and advice, and will publicly advocate reforms on key issues, such as innovation investment, innovation, collaboration and skills, delivering and operating research infrastructure, and how to better plan and use Australia's investment in research and development. This role will be augmented by the creation of a new position of Deputy Chair, which will be filled by Australia's Chief Scientist.
6. Innovation and Science Australia will complement the Commonwealth Science Council, which will continue to advise Government on the high level science challenges facing Australia. Innovation and Science Australia will also continue to perform the work of its predecessor Innovation Australia, including the

administration, monitoring, oversight and operation of programs such as the R&D Tax Incentive, Entrepreneurs Programme, Cooperative Research Centres Programme, programs under the *Venture Capital Act 2002* and *Pooled Development Funds Act 1992* and legacy programs.

### **Overview of statutory framework for spending activities in relation to industry, innovation, science and research programs**

7. A key pillar of the National Innovation and Science Agenda is that the Government will lead by example, embracing innovation and agility in everything it does. The amendments in this Bill embrace this principle by allowing Government to be agile and respond quickly and appropriately to the need to implement innovative ideas and pilot programs on an ongoing basis and as opportunities arise. This level of flexibility is enabled by creating a statutory framework to provide legislative authority for Commonwealth spending activities in relation to industry, innovation, science and research programs. This will provide transparency and parliamentary oversight of Government programs and spending activities, while also reducing administrative burden on the Commonwealth.
8. The amendments in this Bill allow the responsible Minister to prescribe industry, innovation, science and research programs in disallowable legislative instruments, which will be subject to parliamentary scrutiny. The legislative instruments may make provision for operational elements of spending programs, such as eligibility criteria and the process for making applications. The Minister's power to create disallowable legislative instruments will be delegable to other Ministers, which will support collaboration across the whole of government on activities related to industry, innovation, science and research. Improved collaboration for the innovation and science system is a key objective of the National Innovation and Science Agenda.
9. The amendments to this Bill would also provide authority for a Minister, an accountable authority, or their delegates, to make, vary and administer arrangements in relation to the carrying out of activities by a person under a program prescribed by legislative instrument, and for money to be payable by the Commonwealth to the person for that purpose. These amendments will operate consistently and in conjunction with the spending powers under the *Financial Framework (Supplementary Powers) Act 1997* and *Public Governance, Performance and Accountability Act 2013*.
10. This framework is a simple and flexible approach which will allow the Commonwealth to meet changing public demands whilst ensuring its activities and programs are effective, transparent, robust, and operate under clear legislative authority provided by the Parliament. The amendments in this Bill do not purport to provide a general authority to spend and contract, but to allow instruments to be created authorising spending for the purposes of prescribed programs.

### **Consultation about provisions in the Bill**

11. The Attorney-General's Department (including the Australian Government Solicitor, Office of Constitutional Law and the Office of International Law), the Department of Finance, the Department of the Treasury, the Department of Prime Minister and Cabinet and the Department of Health have been consulted on all relevant provisions of the Bill.

## FINANCIAL IMPACT STATEMENT

In addition to the governance changes contained in this Bill, the Australian Government is also providing increased ongoing funding to Innovation and Science Australia for the increased expenditure related to the additional functions of the Board, such as stakeholder engagement, the development of the audit and 15 year plan, research and publications, secretariat support, and travel.

Provision for Innovation and Science Australia's funding, including the additional funding, was made as part of the Agenda on 7 December 2015. The net increase in funding over four years totals \$8.1 million as per the table below.

<b>Innovation and Science Australia</b>	<b>2015-16 (\$m)</b>	<b>2016-17 (\$m)</b>	<b>2017-18 (\$m)</b>	<b>2018-19 (\$m)</b>	<b>Total (\$m)</b>
Change in funding	1.1	2.3	2.5	2.3	8.1

It is estimated that the Bill will have no regulatory impact. Regulatory impacts of programs established under the financial framework provisions will be calculated and published according to government policy when individual instruments are made.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

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This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The *Industry Research and Development Act 1986* (the Act) promotes the development, and improvement in efficiency and international competitiveness of Australian industry by encouraging research and development activities, innovation activities and venture capital activities.

The proposed legislative amendments will broaden the purposes and functions under the Act to provide for strategic advice and programs in relation to industry, innovation, science and research. It will broaden the role of the statutory board and provide it with additional functions and a name that reflect the wider parameters of the Act. The proposed legislative amendments will also include a mechanism to allow the Minister to prescribe programs that further the objective of the Act.

#### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

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## NOTES ON CLAUSES

### **Clause 1: Short title**

This clause provides for the Bill, when enacted, to be cited as the *Industry Research and Development Amendment (Innovation and Science Australia) Act 2016*.

### **Clause 2: Commencement**

This clause sets out the commencement dates for the provisions in this Bill. It provides that the whole of the Act commences the day the Bill receives Royal Assent.

### **Clause 3: Schedules**

This clause gives effect to the provisions in the Schedule to this Bill.

## **Schedule 1 – Innovation and Science Australia**

### **Part 1—Main amendments**

#### ***Industry Research and Development Act 1986***

##### **Item 1: Title**

This amendment repeals the long title of the Act and replaces it with the title, ‘An Act relating to industry, innovation, science and research, and for related purposes’. This amendment is to ensure the long title is consistent with the new broader object of the *Industry Research and Development Act 1986* (IR&D Act) proposed by Item 2 of this Bill.

##### **Item 2: Section 3**

Section 3 of the IR&D Act sets out the object of the IR&D Act. The purpose of the amendment to section 3 is to broaden the object of the IR&D Act to facilitate the provision of independent strategic advice about investment in industry, innovation, science and research; support and encourage collaboration in the development and delivery of programs relating to industry, innovation, science and research and to permit the authorisation of Commonwealth spending on programs relating to industry, innovation, science and research. The amendment also inserts ‘science activities’ as an object where the purpose is the promotion of development, and improving the efficiency and international competitiveness, of Australian industry.

##### **Item 3: Subsection 4(1)**

The amendment at item 3 inserts a new definition of ‘accountable authority’ into subsection 4(1) of the IR&D Act. This Bill will also insert new sections 35, 36 and 37 into the IR&D Act (see below) and the definition of accountable authority is used in those sections.

##### **Item 4: Subsection 4(1) (definition of appointed member)**

The amendment at item 4 inserts the words, ‘Deputy Chairperson’ into the definition of ‘appointed member’ in subsection 4(1) of the IR&D Act. The purpose of this is to ensure that the new position of Deputy Chairperson is also an appointed member under the IR&D Act.

Item 5: Subsection 4(1) (definition of Board)

The amendment at item 5 removes the definition of ‘Innovation Australia’ and replaces it with ‘Innovation and Science Australia’ in subsection 4(1) of the IR&D Act.

Item 6: Subsection 4(1)

The amendment at item 6 inserts a new definition of ‘Deputy Chairperson’ into subsection 4(1) of the IR&D Act.

Item 7: Subsection 4(1) (definition of member)

The amendment to subsection 4(1) of the IR&D Act at item 7 includes the Deputy Chairperson in the definition of ‘member’.

Item 8: Subsection 4(1)

The amendment at item 8 inserts new definitions of ‘non-corporate Commonwealth entity’ and ‘official’ into subsection 4(1) of the IR&D Act.

Item 9: Subsection 4(1) (definition of researcher)

The amendment at item 9 removes the definition of ‘researcher’ from subsection 4(1) of the IR&D Act. This amendment is related to the amendments under this Bill to subsections 4(5) and (6) and section 46 of the IR&D Act.

Item 10: Subsection 4(1) (definition of technical assessment)

The amendment at item 10 removes the definition of ‘technical assessment’ from subsection 4(1) of the IR&D Act. This amendment is related to the amendments under this Bill to paragraph 7(aaa) and section 18A of the IR&D Act.

Item 11: Subsections 4(5) and (6)

The amendment at item 11 removes subsections 4(5) and (6) from the IR&D Act. These amendments are related to the amendments under this Bill to sections 4 and 46 of the IR&D Act.

Item 12: At the end of section 4

The amendment at item 12 inserts a new subsection 4(9) into the IR&D Act. This new subsection defines a reference to ‘research’ in the IR&D Act as being a reference to research in any field. This is to ensure that ‘research’ wherever used in the IR&D Act is not confined to research in the fields of industry, innovation and science but extends to research in any field.

Item 13: Section 6

The amendment at item 13 removes section 6 of the IR&D Act which operated to establish ‘Innovation Australia’ and replaces that section with a new section 6. The new section 6 will operate so that Innovation Australia as constituted under the IR&D Act becomes ‘Innovation and Science Australia’ immediately on commencement of the new section 6. The new section operates in conjunction with section 25B of the *Acts Interpretation Act 1901* and includes a note to that effect.

Item 14: Paragraph 7(aaa)

The amendment at item 14 removes paragraph 7(aaa) of the IR&D Act and replaces it with new paragraphs (aa), (ab), (ac) and (ad). The new paragraphs will more clearly specify the functions of the new Innovation and Science Australia.

#### Item 15: Paragraph 7(d)

The amendment at item 15 removes paragraph 7(d) of the IR&D Act and replaces it with new paragraph 7(d). This amendment is to ensure that any function that is incidental to, or assists with, the performance of any of the other functions of Innovation and Science Australia, should be considered functions of Innovation and Science Australia.

#### Item 16: Paragraph 9(1)(a)

The amendment at item 16 simply replaces the reference to ‘Chairperson’ with ‘Chairperson; and’ to enable the inclusion of the Deputy Chairperson in Innovation and Science Australia.

#### Item 17: After paragraph 9(1)(a)

The amendment at item 17 inserts a reference to ‘Deputy Chairperson’ at subparagraph (aa) so that the ‘Deputy Chairperson’ is included in Innovation and Science Australia.

#### Item 18: Paragraph 9(1)(c)

The amendment at item 18 amends paragraph 9(1)(c) by replacing the number 4 with the number 3 and replacing the number 13 with the number 12. This amendment ensures that the number of board members of Innovation and Science Australia remains the same, noting the inclusion of the new ‘Deputy Chairperson’ on that board.

#### Item 19: Subsection 9(2)

The amendment at item 19 removes the reference to ‘Governor-General’ and replaces this with ‘Minister’ in subsection 9(2) of the IR&D Act. This amendment operates to allow the Minister with administrative responsibility for the IR&D Act to appoint members to Innovation and Science Australia rather than the Governor-General. This is to reduce the regulatory burden associated with appointments made by the Governor-General.

#### Item 20: Subsection 9(5)

The amendment at item 20 inserts a new reference to ‘Deputy Chairperson’ after the reference to ‘Chairperson’. This amendment is to ensure Innovation and Science Australia is able to perform its functions and exercise its powers where there is a vacancy in the position of ‘Deputy Chairperson’, provided the vacancy is for 6 months or a period less than 6 months.

#### Item 21: Subsection 9(5)

The amendment at item 21 removes the number 4 and replaces it with number 3. This amendment is related to the amendment to paragraph 9(1)(c) of the IR&D Act. This amendment addresses the need to include the Deputy Chairperson in the number of board members to be taken into account for the purpose of determining whether a vacancy affects the performance of the functions or the exercise of the powers of the Board.

#### Item 22: Paragraph 10(3)

The amendment at item 22 removes the reference to ‘Governor-General’ and replaces this with ‘Minister’. This amendment is related to the amendment to subsection 9(2) of the IR&D Act under this Bill. This reflects that the Minister will have responsibility for appointing members to Innovation and Science rather than the Governor-General.

#### Item 23: Section 14

The amendment at item 23 removes section 14 of the IR&D Act and replaces it with a new section 14. The new section 14 operates in the same way as the repealed section 14, except that it also:

- includes the ‘Deputy Chairperson’; and



- replaces the reference to ‘Governor-General’ with ‘Minister’.

#### Item 24: Section 15

The amendment at item 24 replaces all references to ‘Governor-General’ with ‘Minister’ in section 15 of the IR&D Act. This amendment is related to the amendment to subsection 9(2) of the IR&D Act under this Bill.

#### Item 25: Subsection 17(1)

The amendment at item 25 replaces the words ‘a member or other person’ with the words, ‘the Deputy Chairperson, a member or other person’ in subsection 17(1) of the IR&D Act. Subsection 17(1) of the IR&D Act operates to allow ordinary members of Innovation Australia, or other persons, to be appointed to act as Chairperson (when the Chairperson position is vacant) for 12 months or periods of less than 12 months.

This amendment operates to also allow the Deputy Chairperson to be appointed to act as Chairperson (when the Chairperson position is vacant) for 12 months or periods of less than 12 months. The amended subsection 17(1) will operate in conjunction with section 33A of the *Acts Interpretation Act 1901* and includes a note to that effect.

#### Item 26: After subsection 17(1)

The amendment at item 26 inserts a new subsection 17(1A) after subsection 17(1) of the IR&D Act. This amendment operates to allow ordinary members of Innovation and Science Australia, or other persons, to be appointed to act as Deputy Chairperson (when the Deputy Chairperson position is vacant) for 12 months or periods of less than 12 months. The new subsection 17(1A) will operate in conjunction with section 33A of the *Acts Interpretation Act 1901* and includes a note to that effect.

#### Item 27: Subsection 18(4)

The amendment at item 27 replaces subsection 18(4) of the IR&D Act with a new subsection 18(4). The new subsection 18(4) will operate so that if the Chairperson is not present at a meeting of Innovation and Science Australia, then the Deputy Chairperson is to preside at the meeting. If the both Chairperson and the Deputy Chairperson are not present at a meeting of Innovation and Science Australia, then the members present must appoint one of their number to preside at the meeting.

#### Item 28: Sections 18A to 20

The amendment at item 28 removes sections 18A, 19, 19A, 19B and 20 of the IR&D Act and replaces those sections with a new section 19. This amendment will streamline a number of the Minister’s powers to direct the board into one section to avoid confusion. The new subsection 19(1) will operate to allow the Minister to make notifiable instruments conferring additional functions on Innovation and Science Australia provided those functions are related to:

- the object of the IR&D Act under section 3 of that Act;
- the *Pooled Development Funds Act 1992*; or
- the *Venture Capital Act 2002*.

Subsection 19(2) will provide that the Minister may give directions to Innovation and Science Australia about the performance of its functions. Directions made by the Minister to Innovation and Science Australia under this provision are notifiable instruments.

Subsection 19(3) will provide that these notifiable instruments may:

- require Innovation and Science Australia to provide certain technical assessments to the Minister;

- require Innovation and Science Australia to provide certain reports to the Minister;
- set out policies and practices that are to be followed by Innovation and Science Australia when performing its functions, or exercising powers, under the IR&D Act, including with respect to any additional functions conferred.

Subsection 19(4) will limit the Minister's power under new subsection 19(2) so that the Minister cannot direct Innovation and Science Australia with respect to particular cases. That is, directions should be general in nature and apply to classes rather than specific individuals or entities.

Subsection 19(5) will provide that a Minister must not confer a function on the Board, by way of a direction under 19(1) or (2), which would allow the Board to commit or authorise the expenditure of Commonwealth money. This reflects the Board's role of providing advice rather than making decisions about Commonwealth expenditure, which are more appropriately made by the responsible Minister or accountable authority.

Subsection 19(6) will provide that the Board must comply with a direction given under section 19. This will ensure the Board is accountable to the Minister and will be required to follow any directions, including to fulfil any functions conferred, by the Minister under section 19.

#### Item 29: Subsections 21(1) and (2)

The amendment at item 29 replaces subsections 21(1) and (2) of the IR&D Act with a new subsection 21(1). The new subsection will allow Innovation and Science and Australia to delegate any and all of its functions to any specific member of that board, to a committee and to a member of the staff assisting that board provided they are an SES employee, or acting SES employee. This amendment removes some of the limitations that applied under the IR&D Act which prevented the Board from making delegations with respect to certain functions under the *Pooled Development Funds Act 1992* and the *Venture Capital Act 2002*. The removal of these limitations will provide flexibility to the Board to manage its administration and oversight of these activities, and will reduce administrative burden on the Board and its committees. However, this is balanced by the limitation that a delegation by the Board to a member of the staff assisting the Board must be to an SES employee or acting SES employee, which will ensure an appropriate level of accountability for the performance of such functions. This item acts in conjunction with section 2B of the *Acts Interpretation Act 1901*, which provides that "SES employee" and "acting SES employee" have the same meaning as in the *Public Service Act 1999*.

#### Item 30: Subsection 22(1A)

The amendment at item 30 replaces the reference to, '21(2)' with, '21(1)' in subsection 22(1A) of the IR&D Act. This amendment is related to the amendments under this Bill to subsections 21(1) and (2) of the IR&D Act, and will reflect that delegations by the Board to a committee will be made under the new section 21(1).

#### Item 31: Subsection 22A(1)

The amendment at item 31 limits the committee's power to delegate any of its functions or powers to a member of staff assisting the committee to a person who is an SES employee, or acting SES employee in subsection 22A(1) of the IR&D Act. This amendment is related to the amendments under this Bill to subsections 21(1) and (2) of the IR&D Act and will ensure the committee has the same limits on its power of delegation as the board. This item acts in conjunction with section 2B of the *Acts Interpretation Act 1901*, which provides that "SES employee" and "acting SES employee" have the same meaning as in the *Public Service Act 1999*.

### Item 32: Subsection 22A(1)

The amendment at item 32 replaces the reference to ‘21(2)’ with ‘21(1)’ in subsection 22A(1) of the IR&D Act. This amendment is related to the amendments under this Bill to subsections 21(1) and (2) of the IR&D Act and will reflect that delegations by the Board to a committee will be made under the new section 21(1).

### Item 33: Subsection 22A(1A)

The amendment at item 33 removes subsection 22A(1A) of the IR&D Act. This amendment is related to the amendments under this Bill to subsections 21(1) and (2) of the IR&D Act.

### Item 34: After Part III

The amendment at item 34 inserts a new Part IV into the IR&D Act including new sections 33, 34, 35, 36, 37 and 38.

#### *33 Industry, innovation, science and research programs*

The new subsection 33(1) will provide a mechanism for the Minister to prescribe programs in relation to industry, innovation, science and research by legislative instrument, including in relation to expenditure associated with those programs.

Subsection 33(2) limits the scope of the power to be conferred under the new subsection 33(1) so that it must be exercised with respect of one or more legislative powers of the Commonwealth.

Subsection 33(3) will require the legislative instruments under subsection 33(1) to specify the legislative power or powers of the Parliament in respect of which the instrument is made.

Subsection 33(4) will make provision for the matters that may be addressed in the legislative instrument.

Subsection 33(5) will provide that subsections 33(3) and (4) do not limit subsection 33(1), so that the matters that may be addressed in the legislative instrument may include matters beyond those listed in those subsections.

Subsections 33(6) and (7) will operate together so that the Minister can delegate his power under subsection 33(1) to other Ministers and such delegation can be made subject to directions with which the delegate must comply. The intention of section 33 is that these legislative instruments will provide legislative authority for expenditure related to industry, innovation, science and research programs, provided those programs are with respect to one or more legislative powers of the Commonwealth.

#### *34 Arrangements relating to industry, innovation, science and research programs*

The new subsection 34(1) will provide that the Commonwealth may make, vary or administer an arrangement in relation to activities carried out by persons under a program prescribed by legislative instrument under subsection 33(1).

Subsection 34(2) clarifies that only a Minister or an accountable authority of a non-corporate Commonwealth entity may exercise the Commonwealth’s power under subsection 34(1).

Subsection 34(3) will provide new definitions for ‘administer’, ‘arrangement’, ‘make’ and ‘vary’ wherever these words are used in the new section 34. The definition of arrangement includes grants.

#### *35 Terms and conditions relating to industry, innovation, science and research program arrangements*

Subsection 35(1) will limit the arrangements made under section 34 so that, where those arrangements are with a State or Territory, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth and that the State and Territory must comply with the terms and conditions.

These will be the terms and conditions on the grant of the financial assistant to a State for the purposes of section 96 of the Constitution.

Subsection 35(2) will limit the arrangements made under section 34 so that, where a party to those arrangements is with a corporation to which paragraph 51(xx) of the Constitution applies, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth and that the corporation must comply with the terms and conditions.

Subsection 35(3) will further limit the arrangements made under section 34 so that, where a party to those arrangements is a corporation, the terms and conditions must provide for the circumstances in which the corporation must repay amounts to the Commonwealth.

Subsection 35(4) clarifies that only a Minister or an accountable authority of a non-corporate Commonwealth entity may exercise the Commonwealth's power under subsections 35(1) and (2). Subsection 35(4) also notes that the power to enter into those agreements may be delegated under the new section 36.

Subsection 35(5) will make it clear that arrangements under section 34 between the Commonwealth and a person other than a State or Territory, or a corporation to which paragraph 51(xx) of the Constitution applies, are not prevented by section 35 from being made subject to terms and conditions.

#### *Minister or accountable authority may delegate powers in relation to arrangements*

Subsections 36(1) and (2) will operate together to provide that Ministers may delegate their powers under sections 34 or 35 to officials of any non-corporate Commonwealth entity and those officials must comply with any directions given about the exercise of that power.

Subsection 36(3) and (4) will operate together to provide that accountable authorities of a non-corporate Commonwealth entity may delegate their powers under sections 34 or 35 to officials of any non-corporate Commonwealth entity and those officials must comply with any directions given about the exercise of that power.

#### *37 Relationship of this Part with certain other Acts*

Subsection 37(1) provides that section 23 of the *Public Governance, Performance and Accountability Act 2013* does not authorise the accountable authority of a non-corporate Commonwealth entity to exercise, on behalf of the Commonwealth, the power to be conferred on the Commonwealth by the new section 33 under this Bill.

Subsection 37(2) provides that the new Part IV does not by implication limit the operation of the *Financial Framework (Supplementary Powers) Act 1997*.

#### *38 Executive power of the Commonwealth*

Section 38 sets out that the new Part IV of the IR&D Act does not by implication limit the operation of the executive power of the Commonwealth.

The new sections under the new Part IV (33 – 38) are intended to operate in a similar way to sections 32B, 32C, 32D, 32DB and 41 under the *Financial Framework (Supplementary Powers) Act 1997* respectively, but adapted to the more specific legislative instrument mechanism inserted by section 33(1).

#### Item 35: Paragraph 44(6)(a)

The amendment at item 35 removes the words, 'to which Ministerial directions under section 18A or 19 apply' and replaces these with the words, 'to which this Act relates' in paragraph 44(6)(a) of the IR&D Act. This amendment is related to the amendments under this Bill to sections 18A, 19, 19A, 19B and 20 of the IR&D Act. The effect of this amendment is to ensure that a person cannot be convicted of both an offence against section 135.2 of the *Criminal Code* and an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* in respect of the same application for the expenditure of Commonwealth

money under a program related to this Act. This extends the effect of the previous provision to apply to programs made under the new mechanism in the new Part IV of the Act, rather than just programs to which Ministerial directions apply.

#### Item 36: Section 46

The amendment at item 36 removes section 46 of the IR&D Act and replaces it with a new section 46. Section 46 of the IR&D Act imposes a very detailed and particularised annual reporting requirement on Innovation Australia. The new section 46 provides a basic obligation to prepare an annual report to be given to the Minister for presentation to the Parliament. This streamlined approach will allow Innovation and Science Australia to report more effectively on its new functions (set out in Item 14 of this Bill). The new section 46 will operate in conjunction with section 34C of the *Acts Interpretation Act 1901* and includes a note to that effect. The Minister will also be able to give directions to the Board under the new section 19(2) about matters to be included in the annual report.

#### Item 37: Subsection 47(3) (definition of protected information)

The amendment at item 37 inserts the words, ‘Part III of’ after the words, ‘covered by’ in the definition of ‘protected information’ at section 47(3) of the IR&D Act. This section of the IR&D Act has operated to apply a statutory confidentiality regime on sensitive taxation information being provided by individuals to Innovation Australia. As the amendments to this Bill will expand the objects of the Act and the functions of the board into areas not directly relating to taxation information, the definition of ‘protected information’ has been quarantined to Part III of the IR&D Act, which sets out the functions relating to the R&D tax offset program.

#### Item 38: Section 48A

The amendment at item 33 removes section 48A of the IR&D Act and replaces that section with a new section 48A. The new section 48A will provide that the Minister may, by legislative instrument, prescribe fees or a method of working out fees for making applications to Innovation and Science Australia under Part III, or for the purposes under the new paragraph 33(4)(e). This amendment will mean that application fees may be prescribed by legislative instrument rather than needing to be set out in regulations made by the Governor-General. It would also allow application fees to be prescribed in relation to programs created by the Minister under the new section 33(1). Subsection 48A(2) will provide that any application fees prescribed by the Minister in a legislative instrument under subsection 48A(1) must not amount to taxation.

#### Item 39: Application and transitional provisions

The amendments at item 39 are application and transitional provisions. Subsection 39(1) of this Bill will ensure that a person who was a member of Innovation Australia prior to the commencement of this Bill will continue to be a validly appointed member of Innovation and Science Australia. Subsection 39(2) will ensure that amendments in Part 1 of Schedule 1 of this Bill (which establishes the new Innovation and Science Australia board), will apply to appointed members of the board regardless of whether the members were appointed prior to the commencement of this Bill. Subsection 39(3) preserves the operation of directions issued by the Minister to the board under sections 18A, 19, 19B or 20 of the IR&D Act that were in force prior to commencement of this Bill.

## **Part 2—Consequential and other amendments**

### Item 40

This provision will amend the *Income Tax Assessment Act 1997* to replace references to “Innovation Australia” with “Innovation and Science Australia” (including within related headings and definitions in that Act).

### Items 41, 42, 44 and 45

The amendments in items 41, 42, 44 and 45 amend the relevant provisions in the IR&D Act so that, where a provision previously required a notice in writing to be published in the *Commonwealth Gazette*, that notice will now instead be a notifiable instrument. These amendments reflect recent changes made by the *Acts and Instruments (Framework Reform) Act 2015*.

### Item 43

The amendment in item 43 preserves the operation of notices issued by the Minister under section 22(1) of the IR&D Act appointing committees prior to the commencement of the Bill, and prevents the need for such notices (previously published in the *Commonwealth Gazette*), to be re-issued as notifiable instruments.

### Item 46

The amendment at item 46 preserves the operation of directions issued by Innovation Australia to a committee under section 23(1) of the IR&D Act (with respect to the matters to be taken into account by a committee in giving advice in relation to a matter or matters, or the practices to be followed by the committee in the performance of its functions), so that such notices (previously published in the *Commonwealth Gazette*) do not need to be re-issued as notifiable instruments.

### Item 47

The amendment at item 47 replaces a reference to “Innovation Australia” in subsection 4(1) of the *Pooled Development Funds Act 1992* with “Innovation and Science Australia”.

### Item 48

The amendment at item 48 replaces a reference to “Innovation Australia” in subsection 355-65(4) of Schedule 1 (table item 6) of the *Taxation Administration Act 1953* with “Innovation and Science Australia”.

### Item 49

The amendments made by item 49 replace references to “Innovation Australia” in various forms wherever they occur in the *Venture Capital Act 2002* with “Innovation and Science Australia”.